FEDERAL TRADE COMMISSION NEWS

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For further information call:
David H. Buswell
Office of Public Information
(202) 962-7144

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PROPOSED RESTRAINT OF TRADE COMPLAINT ANNOUNCED AGAINST A & P AND BORDEN

A proposed Federal Trade Commission complaint alleges that The Great Atlantic & Pacific Tea Co., Inc., has knowingly induced discriminatory prices for dairy products sold in stores of its Chicago Division, did not give material information to the supplier which granted the price discriminations, and participated in a price-stabilization combination with the supplier, Borden, Inc.

The Commission announced its intention to issue a complaint under its consent order procedure against A & P, 420 Lexington Ave., New York City, and Borden, 350 Madison Ave., New York City.

According to the proposed complaint, A & P has entered into an agreement with Borden to supply milk and other dairy products, packaged under A & P's private label, to the majority of the approximately 260 stores of A & P's Chicago Division (Chicago Unit when the agreement was initiated). When Borden tendered its final offer, it informed A & P the offer was being granted to meet competition in the form of an existing offer or offers then in A & P's possession. A & P accepted Borden's offer knowing that Borden had granted a substantially lower price than the only other competitive bidder and without notifying Borden of this fact. Deliveries began under the agreement on or about November 1, 1965.

The complaint alleges that:

. Under these circumstances, A & P's failure to notify Borden that its offer substantially undercut the only other existing competitive bid violates the policy of the amended Clayton Act, and is an unfair practice or method of competition in violation of Section 5 of the FTC Act.

(more)

A & P violated Section 2(f) of the Robinson-Patman Amendment to the Clayton Act by knowingly inducing or receiving discriminatory prices which may substantially lessen competition.

A further allegation is that the conduct of A & P and Borden in connection with the private label agreement resulted in an anticompetitive combination, in violation of Section 5 of the FTC Act. The combination allegedly had the effect of (1) stabilizing and maintaining prices for milk and other dairy products, and (2) permitting A & P to retain the substantial monetary and competitive benefits of the discriminatory price advantage which it had obtained as a result of the agreement with Borden.

For its part, A & P made sales at the prevailing retail price level for vendor label milk and dairy products despite the fact it was paying as much as 11 cents per gallon less for private label than for vendor (Borden) label milk, the complaint says. Thus, it sustained and maintained existing retail prices and did not pass on to the consuming public any of the substantial price savings given it by Borden. Borden, for its part, failed to pass on, at the wholesale level, similar price reductions to A & P's competitors in the Chicago market areas.

In addition to halting the alleged practices, the proposed order states that if record facts show that the proposed provisions "might be inadequate fully to protect the consuming public, or the competitive conditions of the retail grocery or dairy industries, the Commission may order such other relief as it finds necessary or appropriate, including restrictions on specific abuses of buying power in bi-lateral negotiations, restrictions on the use of the competitive bidding process, requirements that special price reductions be passed on to the consumer and to competing retailer-purchasers, the posting or publication of net wholesale prices to A & P, and restriction of vertical integration by A & P into the dairy industry if it appears any such provision is necessary or desirable for effective relief herein."

The respondents have been given the opportunity to advise the Commission whether they are interested in having the proceeding disposed of by the entry of a consent order.

(NOTE: The Commission issues a complaint when it has "reason to believe" that the law has been violated. Such action does not imply adjudication of the matters alleged.)

DETERMINATION TO
ISSUE COMPLAINT
(File No. 671 0149)

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